IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 748 of 1989
With
FIRST APPEAL No. 749 of 1989
With
COSS OBJECTIONS No. 165 of 2005
in
FIRST APPEAL No. 749 of 1989

DATE OF DECISION: 01-12-2005

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STATE OF GUJARAT & ANOTHER
Versus
HARIBHAI BHIMAJIBHAI PATEL & ANOTHER

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[See Next Page for Full Tittle]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Appellants:

MR H.P. HASURKAR AGP for Appellants

For Respondents:

MR SUNIL PARIKH FOR MR JR NANAVATI

MR P.C. MASTER FOR MR H.B. SHAH

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 Both these appeals are proposed to be decided by this judgment since they arise out of the same accident and common award dated 26.12.1988 passed by the Motor Accident Claims

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Whether Reporters of Local Papers may be allowed to see the judgment?

Tribunal (Auxiliary) Sabarkantha, Himmatnagar in Motor Accident Claims Petition No.178 of 1985 and 255 of 1985.

2 Briefly stated, claimants were going to village Dilipur on motor cycle no. GAD 3010 in search of skilled workers for contract work. Claimant Haribhai Bhimajibhai Patel(35) (Haribhai) was driving the motor cycle while Babaji Ranaji Bamniya(22) (Babaji) was pillion rider. They state that motor cycle was being driven at slow speed on the left side of the road. When they came near Modasa College, driver of jeep no. GAD 5522 came from opposite direction driving it rashly and negligently, flouting norms of traffic, dashed against the motor cycle. Claimants were thrown to a distance of 50'. Haribhai suffered fracture of left leg and right hand besides other injuries, while Babaji suffered fracture of left tibia and other injuries. Haribhai was admitted in the General Hospital, Modasa, thereafter, as indoor patient in the

dispensary of Dr. Damor. Haribhai was contractor for past ten years earning Rs.1,000/- per month. After the accident, due to fracture of left tibia and left hand fingers, he was admitted in the hospital of orthopedic surgeon Dr. Damor as indoor patient, operated, steel rod inserted in his leg and whole leg was plastered. He stayed in the hospital of Dr. Damor from 16.01.1985 to 20.03.1985. Since steel rod was inserted in his leg, he was advised four months' rest. For insertion of steel rod in left leg and left hand, he suffered permanent disability. He spent nearly Rs.40,000/- towards medical treatment. In future, he would be operated for removal of steel rod. He could not work for six months in the same manner as he would have worked. He could not lift any weight. He has lost permanent source of income. Original claim of Rs.70,000/- was later amended to Rs.2,00,000/-. He claims Rs.40,000/- for treatment, Rs.25,000/- for pain, shock and suffering, Rs.15,000/- for

loss of income for six months and Rs.1,20,000/- towards permanent disability and future medical expenses.

3 The other claimant Babaji was working as labourer for past 10 years. He was earning Rs.900/- per month. On account of accident, he suffered fracture of left tibia. He was admitted in Modasa General Hospital, thereafter in the hospital of Orthopedic surgeon Dr. Damor as an indoor patient. X Ray was taken, fracture of tibia found, plaster applied in the leg from 16.01.1985 for 1½ month. He remained in the hospital as an indoor patient, thereafter advised rest for four months, suffered permanent disability and spent Rs.15,000/- for treatment. He could not work for six months nor could he lift any weight. He could not climb ladder steps and scaffolding. He claims Rs.15,000/- for treatment, Rs.20,000/- for pain, shock and suffering, Rs.15,000/- for loss of income during the period of treatment and Rs.50,000/- for permanent disability, totalling

Rs.1,00,000/-.

4 Opponents have filed written statement resisting the claims and denied the averments that claimants were moving on the left side of the road and their motor cycle was hit by driver of jeep, driving rashly and negligently on the wrong side. They stated that three persons were on the motor cycle being driven in rash and negligent manner. Driver of motor cycle could not maintain balance, therefore, dashed against the jeep. Accident took place on account of negligence of driver of motor cycle, therefore, claimants are not entitled to compensation. It is denied that claimants were earning Rs.1,000/- and Rs.900/- per month respectively and they underwent treatment for long time and could not work.

5 After hearing the claimants, the Tribunal framed the following issues:-

"1. Whether the claimants prove that they suffered injuries due to rash and negligent driving of Jeep No. G.A.D. 5522 by opponent no.1?

2. Whether the claimants prove that all

the opponents are liable to pay compensation?

3. What amount of compensation should be awarded in claim petition No.178/85?
4. What amount of compensation should be awarded in claim petition no.255/85?
5. What order?”

6. After recording evidence and hearing the parties, the Tribunal held that claimants injured due to rash and negligent driving of jeep GAD 5522 by opponent-2, therefore, the opponents were liable to pay compensation. Accordingly, compensation of Rs.1,50,225/- and Rs.50,600/- respectively was awarded to the claimants with 10% interest from the date of claim petitions till realisation, otherwise, 15% from the date of awards and cost on the awards.

7 Aggrieved by this award, the State of Gujarat challenged the same through First Appeal Nos.748 and 749 of 1989, while Babaji filed Cross Objections No.165 of 2005 in First Appeal No.749 of 1989.

8 Learned counsel for the parties heard,

record perused. Shri H.P. Hasurkar, learned Assistant Government Pleader, submits that the Claims Tribunal did not consider and appreciate the evidence properly, with the result, finding as to involvement of Government jeep is erroneous. He submits that jeep driver did not commit the accident, rather driver of motor cycle caused it, therefore, finding that jeep driver was responsible for causing the accident, is liable to be set aside. With regard to assessment of compensation, it is submitted that just compensation has not been awarded in the case of Haribhai, it is higher, therefore, should be reduced. In case of Babaji, he states that no case for enhancement is made out. These submissions are opposed by the learned counsel for the claimants. Shri Sunil Parikh maintains that findings are based on evidence and just compensation has been awarded to Haribhai. Shri P.C. Master submits that in case of Babaji, finding of Tribunal with regard to responsibility of jeep driver

for causing the accident is correct, but less compensation has been awarded, therefore, it should be enhanced. It is, therefore, necessary to examine both the aspects of the case, namely, whether finding with regard to responsibility of jeep driver for causing the accident is justified and whether just compensation has been awarded to the claimants.

9 Of course, the manner of taking place of accident, culled out from the evidence including that mentioned in the panchnama, is stated in paragraphs 9 to 11, with which we are in agreement. We would like to broadly record that jeep was going from north to south while motor cycle was going from south to north. It seems that jeep treaded into right side leaving its left side with no space to the motorcyclist. Driver of motor cycle, in order to avoid the accident, went to the left side of the jeep, accordingly, hit the left side of the jeep and not the right side. Jeep is stated to be in the middle of the road. It

should not be in the middle of the road and it seems to have been fixed in the middle after taking place of the accident, otherwise, it treaded into the side meant for the motor cycle. The jeep was being driven at fast speed which is clear from the fact that motor cyclist and pillion rider were thrown to a distance of 50'. This appear to be legitimate conclusion from the physical assessment of the site on deep understanding and appreciation of the statements of witnesses and the contents of Panchnama, otherwise, finding on this issue turns on the fact, which, if not perverse, should not be interfered with by the appellate court. Consequently, finding of Tribunal on this question is confirmed.

10 Haribhai has been awarded compensation of Rs.1,50,225/- with running interest at the rate of 10% from the date of claim petition till realisation and cost on that amount and if the amount is not deposited within three months, the rate of interest will be 15% from the date of award. This claimant suffered

following injuries according to medical certificate of Dr. Prafulla N. Shah (Exh.34):

"1. Multiple scars on lt. leg
2. 1½" shortening of lt. Lower limbs (34"-32½)
3. Knee fusion - last 30" limited on lt.
4. Ankle - Dorsiflaxion and planterfluxion both are 20° on lt. Side
5. 1" wasting of lt. Calf (12" - 11")
6. Weakness in lt. Hardgrip with limitation of movements. The hardgrip is moderately weak.
7. Steps palpable at the bases of 2nd, 3rd, 4th and 5th metacarpal.

X-Ray: 1) Old fracture tibia - tibula united with overlapping on. leg.
2) Old united fractures of 2nd, 3rd, 4th and 5th metacarpa with displacements."

11 Doctor assessed permanent disability of his left lower limb at 38% and left upper limb at 19%. Tribunal has fixed it at 28.5%. Taking into consideration the injuries, period and expenses incurred on treatment, pain and suffering undergone by him, loss of earnings present and future, compensation has been awarded. We find that award of compensation

is just and proper calling for no interference. However, in the case of Babaji, the injury suffered is compound fracture on the left leg. He remained in hospital for more than two months under the treatment of Dr. Damor. He must have underwent great pain, shock and suffering, incurred expenditure of treatment and related items. Although, medical bills have not been furnished, considering the injuries suffered, period and nature of treatment, the award seems to be less, therefore, under these two heads, namely, for pain shock and suffering and similarly medical expenditure and attendant charges, etc., compensation is enhanced to Rs.20,000/-.

12 Accordingly, what emerges is that both the First Appeals Nos.748 & 749 of 1989 are rejected. Cross Objections No.165 of 2005 preferred by Babaji in First Appeal No.749 of 1989 are allowed to the extent that Babaji would be entitled to further compensation of Rs.20,000/- with interest at the rate of 10%

from the date of claim petition till payment. Compensation to be deposited with the Claims Tribunal by the appellants within two months and paid to the claimants. Costs of these Appeals and Cross Objections shall be suffered by the parties.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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